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CERTAIN ASPECTS OF MILITARY PROCUREMENT SIMPLIFICATION

THOMAS F. WATTLE

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CERTAIN ASPECTS OF MILITARY PROCUREMENT SIMPLIFICATION

by

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A Thesis submitted to the Faculty of The School of Government, Business, and International Affairs of The George Washington University in partial satisfaction of the requirements for the degree of Bachelor of Arts in Social Science.

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CHAPTER I

INTRODUCTION

In the days of sailing ships and solid shot, the business problems of our country's defense were relatively simple, and little was heard about them. This was due, for the most part, to the fact that the ships' guns and other hardware were uncomplicated and military procurement was fairly simple; however, as military weapons have developed into the fantastically complicated and sophisticated systems of today, and as our troops and ships have been more and more disposed throughout the free world, the problems of business administration and of procurement have increased tremendously in size and complexity.

In earlier times the Department of Defense was willing in many cases to sacrifice quality for quantity in the manufacture of weapons. That day is disappearing. The weapons of today and of the future place emphasis on improved reliability, which stresses quality. This is one reason for the tremendous increase in the price of individual weapons. Polaris submarines cost $100 million, compared to the $5 million submarines of World War II; F-106 fighter aircraft cost more than $3 million, compared to $80 thousand for World War II types; B-58 bombers cost $15 million each, against $250 thousand for the B-17; and Atlas missile sites must be installed and equipped at a cost

of scores of millions of dollars per squadron.

The effectiveness of these weapons, of course, is tremendously greater than that of their World War II or Korean counterparts, so fewer of them are needed. This is one reason why it has been possible to keep the military budget within feasible limits.

In spite of this, the Department of Defense estimates its expenditures in fiscal year 1962 will be almost $43 billion, of which $26 billion will be spent on contracts for equipment, material, and services, including research and development. These 26 billion dollars are more than three times the combined purchasing volume of General Electric, General Motors, and United States Steel.[1] Approximately 7 million procurement transactions will take place, most of which will be for small purchases under $2500, but this figure gives one an idea of the procurement activity involved.

When procurement becomes this large a business mistakes and waste are bound to occur. With the General Accounting Office and Congress riding herd on the taxpayer's dollar and making no secret of the errors and waste in procurement which they have uncovered, and with the newspapers eager to print any readable news on the subject, the military procurement system has received severe and frequent criticism.

As an example, Senator Paul Douglas (Democrat - Ill.) and Representative Thomas B. Curtis (Republican - Mo.), members of the Joint Military Procurement Subcommittee, recently stated that the high-ranking

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[1]U. S., Department of Defense, Assistant Secretary of Defense (Supply & Logistics), Big Business in the Military, information pamphlet on defense supply management.

officers of the armed services were more interested in preserving bureaucracy than in economical buying, and that the military procurement system was fraught with poor organization and mismanagement.[2]

This is a typical criticism of the armed forces procurement system and implies that personnel involved therein are, for the most part, either lazy or incompetent or both. Of course, this is not true, but as a result of such simplified reasoning, too many people have in their minds a vision of military supply as expressed in terms of waste, duplication, inefficiency, too many canned hamburgers, high priced oyster forks, and other vivid examples. Defense procurement is cited in the press and radio on most of its mistakes but usually never receives recognition for the good work accomplished by thousands of competent, dedicated military and civilian supply specialists.

The American taxpayer is conscious of the high cost of military procurement and, most certainly all of us want the Defense Department to get every last penny's worth of every procurement dollar spent; consequently, when waste and expensive mistakes are uncovered in military procurement it hits a sensitive spot in all of us -- our pocketbooks. It is true that military procurement has become very, very costly and that, unfortunately, some expensive procurement mistakes are made; but to chalk this up mainly to poor organization, mismanagement, and to a bunch of bureaucrats -- as Senator Douglas and Representative Curtis seem to have implied -- is a gross simplification and an inadequate, incorrect explanation of the problem.

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[2]Washington Post, October 14, 1960, p. 1.

For one thing, military procurement has been unnecessarily complicated by a number of legal restrictions imposed by Congress upon the placement of contracts. Instead of being able to concentrate solely on getting the best bargain for the government's dollar, contracting officers find themselves mired in regulations designed to enforce social, economic, and political objectives through the use of procurement dollars. Such encumberments only increase the chances of making costly errors while the benefits derived from them are questionable. Relief from such legislation would most certainly result in a more efficient and economical procurement operation.

In addition the armed services are being criticized constantly by Congress for using negotiated contracts more than advertising. For example:

> There have been many glaring examples of excessive spending attributable directly to the system of negotiated contracts. In effect, this amounts to sheer waste and is a procedure which literally cries for remedial legislation.[3]

> Under the existing law there is much emphasis placed and the Defense Department relies largely on what they describe as the /negotiated/ incentive contracts. But in my opinion this has not worked.
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> . . . . . .
>
> I think that there is only one answer for it, and that is a clear definition in the law that it is the intention of Congress that the Defense Department use in every instance competitive bidding practices in buying.[4]

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[3]Styles Bridges, senator from New Hampshire, testimony before the Military Procurement Subcommittee of the Committee on Armed Services, United States Senate, U. S. Senate, Committee on Armed Services, Hearings on S. 500, Procurement Procedures of the Armed Services; S. 1383, Specific Standards Governing the Use of Negotiated Contracts; and, S. 1875, Encouraging Competition in the Procurement of the Armed Services, 86th Cong., 1st Sess., 1959, p. 57.

[4]John J. Williams, senator from Delaware, ibid., p. 55.

As a result of such sentiments as these, considerable administrative burdens are placed upon the contracting agency to justify negotiated contracts, maintain records on them, and forward certain reports about them to Congress. Many times nondelegable action by the military department secretary or assistant secretary is specifically required.

It cannot be denied that much of the waste in procurement is due to errors of judgment on the part of contracting personnel, but it is the contention of the writer that the majority of these errors can be laid not to stupidity and/or to incompetency, but rather, to the complexity of the procurement process, and that the efficiency of procurement can be improved through removal of some of the unnecessary burdens cited above.

It is the purpose of this thesis to analyze some of the more outstanding encumberments now perched upon the shoulders of military procurement and also, to point out the very real economies in procurement which have been effected by the armed forces through their coordinated purchasing programs.

CHAPTER II

THE BURDEN OF SOCIAL-ECONOMIC LEGISLATION[5]

Why Social-Economic Legislation Has Grown

The federal government is imposing its policies upon private industry in an ever-increasing variety of ways, e.g., the granting or denial of licenses and/or privileges, the levying of taxes and grants-in-aid for the states. One of its principal methods -- and one which has a significant effect on military procurement -- is the use of clauses in government contracts by which the contractees must conform to standards or values which have no direct bearing on procurement itself but which DO accomplish some of the regulatory ends of government. This may be very edifying to people in the top levels of the Executive and Legislative Departments, and satisfying and rewarding to certain elements of the populace who benefit therefrom, but at the procurement level such restrictions only complicate and make more expensive an already difficult and costly process.

These inroads into the area of pure governmental procurement are only natural in an era of rapid expansion of federal activities; however, such

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[5]The main reference source for this chapter is an article by Arthur S. Miller, "Government Contracts and Social Control: A Preliminary Inquiry," Virginia Law Review, January, 1955, pp. 27-58.

expansion requires new policies, more stretching of the powers implied in the Constitution, and considerable ingenuity in perfecting different techniques by which the new policies can be made effective. Contract manipulation is one of these techniques.

Regulation by contract has been used by the federal government, in one form or another, since the mid-nineteenth century. Its effect was minor until about twenty years ago because federal purchases formed only a small portion of the national economy. In 1940, however, the federal government leaped from a small consumer to an extremely large one and has remained so ever since, to the point that if it were suddenly reduced to its size and activity of 1939, the national economy would be in a state of near-paralysis.

It follows that in such a commanding position any regulatory or restrictive clauses which the federal government places in its procurement contracts will have a noticeable effect throughout the country. Such clauses can favor one segment of society over others, enforce minimum wages or standards not otherwise provided by law, prohibit certain activities etc; hence, this technique of enforcing government policies has become one of the most used and most important methods of imposing the government's will on industry.

The Change in Contract Relationships

The principal method used by American society to allocate natural and human resources in the national community has long been the contract. Traditionally, under the American free-enterprise system, the signing of a

contract has assumed, among other things, two approximately equal bargainers dealing at arm's length, each attempting to improve his position, with neither having a superior bargaining position over the other.

Times are changing, however, and increasingly greater portions of the national resources and national economic life are being controlled by means of contracts between parties of unequal bargaining power, in which one party is able to force acceptance of his terms upon the other party. As a result, the transaction is not based on the traditional concept of a contract but, rather, upon power. To be sure, the outward form of the transaction is that of a contract, but free bargaining is absent, having been replaced by a process of private legislation. Theoretically, free bargaining still exists, in that the other party is free either to enter or not enter into the transaction, but in reality there is no choice (e.g., telephone service, insurance agreements, conditional sales contracts). The weaker party needs the goods or services and cannot go to other sources or, if he can, finds that they do business in substantially the same manner.

The businessman seeking government contracts falls within this category. As government procurement increases he finds himself more and more dependent on government business, either as a primary contractor or as a subcontractor to a primary government contractor. Under these circumstances he must submit to conditions having no relation to the buying and selling function. Since 1940, when the federal government became the largest consumer of private enterprise, this condition has become steadily more common, and will continue to do so until the outcome of the struggle between the United

States and the U. S. S. R. is finally determined.

An astute observer of this phenomena has remarked:

> Government purchasing has an important effect on the economy, an effect which will certainly not diminish significantly in the future. Government contracts as an institution play now, and will continue to play, an increasingly important role in the allocation of resources. On a continuing basis, a significant portion of the annual gross national product will be allocated to the Federal Government, particularly to the military forces. The role will not be limited to allocation of resources; important social and economic policy will continue to be promoted through manipulation of federal contracts. . . .
>
> Policies furthered through contract manipulation vary from enforcing minimum wage standards to precluding purchases from foreign sources of supply to aiding geographical areas having conditions of unemployment. Each policy finds a variation on the basic technique; each uses the federal contract in a different manner. Basically, however, there is a thread of consistency which ties them together: that of using the institution of contract as a means for social control.[6]

The observer, however, has failed to mention that the use of contracts for social control not only affects the businessman, it also affects the efficiency of federal procurement, particularly in the armed services. Let us now look at the more important social control contract clauses and consider their influence on procurement efficiency.

Areas of Government Control by Contract

The "Buy American" Act

The "Buy American Act" was originally passed as part of the Treasury and Post Office Appropriation Act of 1934. It was enacted during a period of

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[6]Arthur S. Miller, op. cit., p. 32.

economic depression but is still in force. Its primary purpose is to relieve domestic unemployment by requiring government agencies to give preference to domestic suppliers unless the domestic price is clearly unreasonable when compared with the foreign bid. It also includes a preference over American firms which import foreign-made goods, since the prohibition is on the article, not the seller.

Until the beginning of 1955, the bid or offered price of a domestic supplier was deemed unreasonable if it was greater than 125% of the bid or offered price of the low foreign bidder. If it was less than 125%, the domestic bid would be given preference. This had the effect of the government's paying a premium of up to 25% for such of its purchases in which American business competed with foreign business.

Under President Eisenhower's "Trade Not Aid" policy, the Buy American Act was modified by Executive Order 10582 of 2 December 1954, in order to stimulate greater foreign trade in place of financial assistance. An additional objective was to stretch the taxpayer's dollar through increased competition for government contracts while still maintaining and protecting a sound American economy. The modification consisted of lowering the bid or offered price differential from 125% to 106%, or 112% in the event that the low domestic bidder is from a labor surplus area, a small business concern, or both. On the surface, the government pays a premium of up to 12% for those of its purchases in which American business competes with foreign business; however, in those instances where the low acceptable foreign bid or proposal exceeds $100,000 and where the low acceptable domestic bid exceeds 106% --

or 112%, as the case may be -- the law requires that the proposed award not automatically go to the low foreign bidder but that it be sent -- in the case of the Department of Defense -- to the secretary of the armed service involved, for decision. Awarding of large contracts -- $100,000 or more -- to foreign bidders is given very careful consideration because of the unpleasant repercussions which may develop domestically. Such awards are made only when domestic bids are far out of line. In effect, then, foreign competition for military procurement is limited to small business, to the detriment of economic military procurement.

The Buy American policy has increased the costs of military procurement, but to what degree is difficult, if not impossible, to determine. The Commission on Foreign Economic Policy had this to say concerning the subject:

> Any estimate of the elimination of the Buy American provisions on governmental costs . . . is subject to only the roughest sort of approximation. As nearly as we have been able to determine -- subject to extremely wide margins of error -- the United States Government may be able to save up to $100 millions annually through lower prices, and to increase customs revenue by $100 millions if the Buy American principle were eliminated.[7]

With the federal budget running over $80 billion annually, one may reflect that a saving of $200 million is a mere "drop in the bucket," but such thinking is fallacious. Two hundred million dollars will buy two Polaris submarines, each with the capability of launching 16 hydrogen-warhead missiles, sufficient to severely impair the war-potential of even the mightiest foe.

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[7]U. S., Commission on Foreign Economic Policy, Staff Papers (1954), p. 318.

This $200 million is 40% of what President Kennedy has requested to implement the Act of Bogota. A "little" savings here and some more there and before one realizes it, the amount saved can approach $2 billion -- almost 5 percent of the Department of Defense budget. This particular $200 million, however, cannot be saved because, by law, the Buy American clause is part of the Armed Services Procurement Regulation and must be obeyed.

Aside from consideration of the welfare of the domestic industry, there are factors unfavorable to large foreign purchases. One must ponder the possibility of the unavailability of spare parts and technical assistance as well as the possibility that excessive purchases overseas might seriously curtail, or even force out of business or into other activities, comparable segments of American industry. Proponents of the Buy American Act might argue that this conceivably could result in the lack of adequate capacity within the continental United States in case of global war, with disastrous consequences. The government's present imbalance of payments plight would also tend to discourage any change in the Buy American Act at the present time.

On the other hand, it is a well-accepted economic principle that we must engage in a large amount of foreign trade to continue to grow and prosper. This means that U. S. goods must be priced competitively on the world market. At the present time this is not the case except in those areas where we possess a clear lead or manufacturing advantage; for example, complicated industrial machinery, construction and mining equipment, and grains and preparations therefrom.

During the nation's infancy, the federal government sought to protect and encourage domestic industry through use of the high import tariff. This policy was ultimately dispensed with when it became clear that industrially we could compete effectively with foreign nations without government assistance. Another reason for the policy's being rescinded was the realization that such a restriction on foreign competition was feathering the nests of domestic businessmen at the expense of the American people as a whole.

The Buy American Act is just another variation of the import tariff principle. It may have been justified at the time of its enactment because of the Great Depression, but in these days of prosperity, at a time when our foreign trade must be stimulated not only for its intrinsic benefits to our continued growth but also because Communist-bloc countries will capture the potential markets if we do not compete effectively with them, the Buy American Act is unjustified. Competition is the life-blood of industry but the Buy American Act chokes it off.

Special Consideration for Labor Surplus Areas

On an equal footing with the Buy American legislation is the policy of aiding labor surplus areas, i.e., areas where high unemployment exists, by placing contracts with labor surplus area concerns. This policy was instituted by Defense Manpower Policy No. 4 -- hereinafter referred to as DMP-4 -- issued in 1952 by the Office of Defense Mobilization, which had as its purpose "procurement by negotiated contracts and purchases with

responsible concerns which are in an area of current or imminent labor surplus . . . in cases where the public interest dictates the need for doing so."[8]

As a matter of national policy this nation is committed to "maximum" employment and must, therefore, use all possible means to attain that goal. The federal government must strive to create and maintain conditions leading to a high level of employment, and providing work for people has been one of its goals since the economic depression of the 1930's.

Under the policy of DMP-4 areas of relatively high unemployment are given preference in the award of federal contracts. It is a form of "pump-priming" designed to assure utilization of the nation's total manpower potential by making use of the manpower resources of each geographical area.

Digressing for a moment to the subject of "pump-priming," many economic experts believe that large federal expenditures during the 1930's contributed most to the rise of the economy into conditions of relative prosperity and consequent minimal unemployment. This "pump-priming" theory is apparently subscribed to by the present administration if President Kennedy's recent order to increase government expenditures -- through stepped-up highway construction, for example -- is any criteria. Such measures may be good for the overall economy but they can raise hob with frugal military procurement. The following illustration shows how:

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[8]U. S., Office of Defense Mobilization, undated mimeographed release number ODM-3560, p. 1.
Note that DMP-4 is a policy originated by the Executive Branch of the government rather than being an enactment of Congress.

> Defense Secretary Wilson wants to know why military procurement during the past fiscal year has lagged. Top officers of the Army, Navy, and Marine Corps are on the carpet attempting to explain why they ordered $5.5 billion less than they were supposed to order. On June 30, end of the 1953-54 fiscal year, the military had $14.5 billion in unobligated appropriations. On the basis of estimated need made in January, slightly less than $9 billion was expected to remain in the till at fiscal year's end. The military will probably have more trouble explaining the procurement lag than the Democrats. Democratic leaders detect a political plot. Throwing $5.5 billion in new orders into business channels along about late August or early September could give quite a boost to the nation's economy. It could absorb a good percentage of the 4,000,000 unemployed.[9]

In this case it appears that military procurement officers were chastised by their leader for attempting to save money -- $5.5 billion, to be exact -- and very likely were condemned by the press as wasteful and extravagant for spending it as ordered by their civilian superior.

Returning to DMP-4, as originally enacted it provided that certain areas were to be designated as "surplus labor areas" by the Department of Labor, and "all practicable steps consistent with procurement and military objectives, other than price" were to be taken "to locate procurement" by the Department of Defense and General Services Administration in the areas so designated.[10] The two agencies were authorized to pay a price differential, i.e., higher prices, for the goods so procured. This authority, however, was not used because of an unfavorable decision by the Comptroller General.[11]

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[9] The Lawyer's Weekly Report, July 5, 1954, para. 2.

[10] U. S., 18 Federal Register, 6995, 6995 (1953).

[11] U. S., 28 Decisions of the Comptroller General, 662 (1949).

In November, 1954, DMP-4 was modified to the extent that authority for the payment of price differentials was eliminated and the process of "bid matching" abolished.[12] In place of this practice, a system of "set-asides" has been substituted, the method being to split individual procurements, awarding part of the total purchase -- the non-set-aside portion -- to the lowest bidder, wherever located. "Negotiations for award of the set-aside portion" are then conducted "only with responsible labor surplus area concerns" and small business concerns -- about which more will be said later -- "who have submitted responsive bids or proposals on the non-set-aside portion at a unit price within 120 percent of the highest award made on the non-set-aside portion." The set-aside is awarded at "the highest unit price awarded on the non-set-aside portion, adjusted to reflect transportation and other cost factors which were considered in evaluating bids on the non-set-aside portion."[13]

One must read this last paragraph at least two or three times before grasping its meaning; imagine how much more difficult it is for the contracting officer who must administer it.

By adding concepts unrelated to the buying function, as such, the executive branch of the federal government is actually giving preference to certain areas of the country at the expense of others, and, as a side-effect, has made military procurement more difficult and more expensive; nevertheless,

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[12]Under this practice, a firm in a surplus labor area was allowed to obtain contracts by matching the best offer received by the agency from a firm located outside those areas.

[13]U. S., Department of Defense, Armed Service Procurement Regulation (1960 Edition), (hereinafter referred to as ASPR), para. 1-804.1.

on the surface, once it is recognized that the federal government has some responsibility for maintaining high levels of employment throughout the nation, then the policy would seem to be a reasonable technique to be used in fulfilling that responsibility; on the other hand, the amount of good accomplished under DMP-4, despite elaborate procedures and regulations, appears slight as the factual data below suggest:

TABLE 1

EFFECT OF DMP-4[14]

	(1)	(2)	(3)	
	Value of military contracts placed	Portion of (1) in distressed labor areas	Portion of (2) attributed to DMP No.4	(A) - Percent of (3) to (1) (B) - Percent of (3) to (2)
Calendar year 1954	$13.4 billion	$961 million	$33 million	(A) - 0.25% (B) - 3.50%
Mar.1952[a]-Jan.1955	$63.0 billion	$2.9 billion	$99 million	(A) - 0.16% (B) - 3.50%

[a]Beginning of Defense Mobilization Policy No. 4.

Although the above information is rather old, the implications contained therein are substantiated by the fact that in fiscal year 1960, the U. S. Navy spent only $4.6 million in labor surplus set-aside procurement out of $7.9 billion expended on procurement--approximately six-one hundredths of one per

[14]U. S., Commission on Organization of the Executive Branch of the Government, Task Force Report on Military Procurement, June, 1955, p. 25.

cent.[15] One may well wonder if the effort is worth the results.

The Small Business Act

"Small business" includes the great majority of American business firms, but in terms of gross national product or of wealth controlled, small business is just plain, ordinary small compared to big business; nevertheless, it involves a large number of votes and thus receives much attention and much helpful legislation from Congress. This legislation is mostly concerned with giving preferential treatment to small firms when federal contracts are awarded.

> It is the declared policy of the Congress that the Government should aid, counsel, assist, and protect insofar as is possible the interests of small-business concerns in order to preserve free competitive enterprise, to insure that a fair proportion of total purchases and contracts for supplies and services for the Government be placed with small-business enterprises.[16]

Statements reflecting this policy are found in the acts governing purchases by the military departments and the General Services Administration; however, although the buying agencies are given responsibility for carrying out the policy, they are not given specific instruction on how to do it. Consequently, the Small Business Administration, hereinafter referred to as the SBA, has been established to aid the agencies and to watch out for the

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[15] U. S., Department of the Navy, Survey of Procurement Statistics (NAVEXOS P-1573), June, 1960, p. 27.

[16] U. S., 67 Federal Statutes 232 (1953), United States Code, para. 631, (Supplement I, 1954) (Small Business Act).

interests of the small businessmen. The SBA has blossomed into a fairly large organization of 2,244 employees, with small business specialists being appointed in each principal procurement office of the military departments.

To implement the above policy, procurements are often divided into such reasonably small lots as to enable and encourage small business concerns to make bids for them. Obviously, the total price paid under such circumstances will likely be appreciably higher than if the procurement had been made entirely from one large firm.

Other methods employed to implement the policy are through granting as many prime contracts as possible to small business, and through encouragement of maximum subcontracting to small business by large firms holding defense contracts.[17] In addition, any individual procurement or class of procurements (or an appropriate part thereof) is set aside for the exclusive participation of small business concerns when such action is determined by the contracting officer and the SBA representative (when one is available) "to be in the interest of maintaining or mobilizing the nation's full productive capacity . . . or in the interest of assuring that a fair proportion of Government procurement is placed with small business concerns."[18]

The set-aside procedure is commonly employed for small construction and maintenance jobs, where small businesses are the better suited to accomplish the task, but it also is not infrequently employed in the

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[17]As subcontractors, the small businessmen may become economically dependent on the large enterprises, which would then control their destiny. The opportunities for hard dealing and for driving unfair bargains are very tempting.

[18]U. S., Department of Defense, ASPR, para. 1-706.1.

procurement of large orders of equipment which are manufactured by a significant number of small business firms--uncomplicated hand tools, for instance. In these cases, the procurement must be divided, once again, into such reasonably small lots as to be handled by small businesses, thus increasing the total procurement price.

How much extra money and effort does it cost? It is doubtful if anyone can successfully estimate it, but certainly in the man-hours spent in rendering extra consideration to small business in the military procurement area alone, the cost is appreciable, and it is obviously a complicated process.

Labor Regulation by Government Contracts

The field of labor involves perhaps the most comprehensive pattern of federal regulation by contract. Wages, hours, and working conditions of employees of government contractors are all regulated through the government contract.

It was not always thus, even though as far back as 1840, the United States government was interested in improving the condition of those employed by it, or employed by those selling goods and services to it. Early emphasis was on maximum hours and it was not until the twentieth century that minimum wage provisions appeared. At the present time, however, not only wages and hours, but also such matters as discrimination because of race or color are covered by various statutes and executive orders.

The most important of the statutes imposing conditions upon those wishing to contract with the government are the Davis-Bacon[19] and the Walsh-Healey[20] Acts.

The Davis-Bacon Act provides that certain contracts over $2,000 entered into by any federal department for the construction, alteration, or repair (including painting or decorating) of public buildings or public works shall contain a provision "to the effect that no laborer or mechanic employed directly upon the site of the work contemplated by the contract shall receive less than the prevailing wages as determined by the Secretary of Labor."[21] Penalties, including termination of the contract and withholding of funds due under it, may be imposed for failure to pay the prescribed wage.

The Walsh-Healey Public Contracts Act, as it is properly called, was enacted on June 30, 1936, and requires that all contracts entered into by any federal department for the manufacture or furnishing of supplies in any amount exceeding $10,000 will be with manufacturers or regular dealers and shall "incorporate by reference the representations and stipulations required by said Act pertaining to such matters as minimum wages, maximum hours, child labor, convict labor, and safe and sanitary working conditions."[22] The act

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[19]U. S., 40 United States Code, para. 276a-276z-5 (1952).

[20]U. S., 41 United States Code, para. 35-45 (1952).

[21]U. S., Department of Defense, ASPR, para. 12-401(a).

[22]Ibid., 12-601.

vests in the Secretary of Labor the power to establish wages, hours, and working conditions for employees engaged in labor on federal contracts, and contracts subject to the act require the payment of overtime compensation at the rate of one and one-half times the basic rate of pay. The scope of coverage of the act can be comprehended by comparing the number of contracts and dollars involved in fiscal year 1938--5,306 contracts for $302 million[23]--with those for fiscal year 1952--65,475 contracts for $11 billion.[24]

Firms which have violated either the Davis-Bacon Act or the Walsh-Healey Act may be "blacklisted." Such determination may be made by the Department of Labor pursuant to its investigating complaints of noncompliance and such a penalty can be an extremely drastic one, thus ensuring general adherence to the laws.

Both acts seek to establish and maintain labor standards considered to be fair by the government, though local industries dealing in private enterprise need not comply therewith. This social control is accomplished by subordinating the normal policy of the government to buy its necessities at the lowest price, and procurement prices increase in order that the general welfare may be served.

One can scarcely argue with the lofty aim of Congress for the federal government to set the example in the fair treatment of the ordinary working man, but the methods of enforcing the Walsh-Healey and Davis-Bacon Acts throw

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[23]U. S., Department of Labor, 26th Annual Report of the Secretary of Labor (1938), p. 48.

[24]U. S., Department of Labor, 40th Annual Report of the Secretary of Labor (1952), p. 103.

an unwarranted burden on military procurement personnel.

The Secretary of Labor is empowered under these statutes to issue regulations binding on other agencies with respect to the manner in which these acts will be enforced. Under his regulations, a contracting officer administering a construction contract, for example, must get the payrolls of the contractor AND subcontractors who are engaged in construction and examine them to see if substandard wages are being paid.[25] Such a task has nothing to do with getting the construction job done; it actually hinders the fundamental purchasing mission.

Competition with Business

A side effect of the government's desire to promote private enterprise is the Executive policy of minimizing the competition of the government with industry. This policy differs from the other social-economic legislation discussed in that its principal result has been an increase in the cost of procurement rather than in its complexity.

As the federal government has grown larger it has found itself with an increasing number of irons in the industrial fires of the nation, the result being that it has operated a surprisingly large number of enterprises whose products or services are not peculiar to the needs of the government alone, but which actually are in competition with private business. A good example

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[25]U. S., Regulations, Federally-Financed Construction Acts, part 5, para. 5.6, 6.

is the one-time coffee roasting plant at the Naval Supply Depot, Oakland, California. This plant received raw coffee beans, frequently directly from ships bringing them from South America to the San Francisco Bay area. The beans were then roasted, ground, and packaged in various containers for distribution throughout both the Navy shore establishment and the ships of the fleet. Such an operation was far more economical from the Navy's point of view than procuring already-packaged coffee from commercial sources, but there is no doubt that this money-saving activity deprived private American enterprise of a sizeable amount of business.

An important aim of the federal government has long been the preservation and strengthening of a free enterprise economy and it has sought to avoid unnecessary participation, on its own part, in activities that could as well or better be carried on by private enterprise. The interpretation of this last phrase includes getting out of activities which the government can do for less than private business when, by doing so, private business will be appreciably stimulated.

In 1955, President Eisenhower directed the inauguration of an executive branch program designed to carry out the general policy that the federal government would not start or carry on any commercial activity to provide a service or product for its own use if such product or service could be procured from private enterprise through ordinary channels.

The initial phase of the program was concerned with determining the magnitude and extent of governmental activities providing goods and services for the government's own use. A comprehensive inventory of activities of a

commercial-industrial nature was prepared and issued by the Bureau of the Budget in May, 1956, in a publication entitled, "An Inventory of Certain Commercial-Industrial Activities of the Government."

The second phase of the program, which is still in process in the Department of Defense, has been the evaluation of commercial-industrial type installations by the heads of agencies to determine whether the activities should be discontinued, curtailed, or continued. Evaluations have been in three groups: first, government-operated manufacturing activities; second, the activities classified as services; and finally, all remaining commercial-industrial activities.

In making the inventory mentioned above, the Department of Defense found approximately 5,000 commercial-industrial installations. As of the end of 1960, about 2,900 installations had been evaluated, of which it was decided to discontinue 450. The remaining 2,450 installations were continued for compelling reasons--needed for national security, administratively unfeasible to contract for commercially, etc.. Of those to be continued, over 150 are to be curtailed.

Among the installations discontinued are automobile repair shops, bread and bakery shops, horticultural services and specialties, ice cream plants, and, of course, the previously-mentioned coffee roasting plant.

It is difficult, if not impossible, to determine how much the price of military procurement has been increased--if at all-- by this policy. It may well be argued that the direct increase of cost resulting, for instance, from discontinuing a bread and bakery shop and obtaining such supplies from a

commercial bakery is offset by the indirect decrease in cost resulting from release of the bread and bake shop crew to other duties and from discontinuance of the overhead costs of operating the bread and bake shop.

It is probably safe to say, however, that this policy has resulted in an increase in the DIRECT costs of military procurement and a DECREASE in operations and personnel expenses.

CHAPTER III

WHY NEGOTIATION IS NECESSARY

During fiscal year 1959 some 80 per cent of the military contract dollars and 70% of the total contract transactions over $2,500 were accounted for by negotiated contracts.[26] The figures were even higher in previous years. Naturally, this has drawn strong criticism from Congress. The typical attitude on the "hill" is embodied in the comment of a leading congressman, "Why is it such a percent /sic/ of Defense spending must be accomplished this way /negotiated contracts/? My state government can buy all of its requirements with sealed bids. Why can't the military do the same thing?"[27]

The press is of the same opinion, if one may judge from the following illustration:

ANOTHER TRAGIC STORY OF WANTON WASTE
by Ed Koterba

> This is the tragic story of AN-WRT2, another case history in the Pentagon of fantasy of wanton waste of the taxpayer dollar.
> AN-WRT-2 is the code number for a naval radio transmitter. Millions of dollars are involved.
> . . . . . .

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[26] U. S., Department of Defense, Procurement Presentation to the Procurement Subcommittee of the Committee on Armed Services, United States Senate in Connection with the Committee's Study on Procurement Policies and Practices as Provided for in Public Law 86-89, February, 1960, p. 7.

[27] U. S., Department of Defense, Office of the Assistant Secretary of Defense (Supply & Logistics), pamphlet, "Big Business in the Military," p. 2.

> This sad tale begins in 1953. The big chiefs of the Pentagon's Navy wanted a transmitter which could be used for both surface and submarine craft.
>
> They selected one company to do the research for it. No bids were taken. The contract was awarded to a firm without competition, thru "negotiation" /sic/.
>
> The firm, Westinghouse Corporation, was handed $1.8 million to spend in developing this particular radio. In other words, taxpayers paid for the research and development of the transmitter.
>
> When the radio was ready for production (development cost Westinghouse not one cent), the Navy awarded a contract for manufacturing the units.
>
> Instead of seeking bids in the ordinary way, the Navy turned thumbs down on outside competition. The contract went to Westinghouse. Our cost: $12.8 million. That came to $29,725 per radio.
>
> Last year, the Navy wanted more of those radios. Again they shunned outside bids altho /sic/ pressure from other companies was hard against the doors.
>
> This time, Westinghouse, the sole-source on a negotiated-contract, got it for $12.1 million. This time the radios cost $19,600 each.
>
> Now, what would those transmitters have cost the taxpayers if bids were thrown open to other companies, in the manner of true, American red-blooded business competition?[28]

It would seem that the Navy erred grievously in failing to procure the AN-WRT-2 transmitters by the advertised bid method; however, let us analyze at close range the problems with which one becomes involved when using this method.

There are four criteria to permit advertising to be applicable or effective in procurement. These are:

1. Adequate descriptions or specifications of what is to be purchased. This suggests an item that is reasonably stable in design, and one which will be essentially the same, including the minimal quality, no matter who produces it. With regard to Mr. Koterba's comments above, when the Navy was seeking a

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[28] Washington Daily News, February 21, 1961, p. 8.

NEW type of radio transmitter, specifications could hardly be drawn up for something that did not yet exist, and bids could not very well be taken without specifications on which to make a bid.

2. There must be two or more suppliers available, willing and able to compete effectively for the government's business.

3. Selection of the successful bidder can be made on the basis of price alone.

4. Sufficient time must be available to prepare a complete statement of the government's needs and the terms upon which it will do business, and to carry out the administrative procedures required by the advertised bid method.

This method is completely ineffective when any one of these essentials cannot be satisfied. Someone once likened these criteria to a four-legged stool. If any one leg is removed, the stool is useless.

A fifth criteria might also be added, viz., that the details of the item may be publicized and not be restricted by security classifications or by proprietary design. This very likely could not have been done in 1953 in the case of the AN-WRT-2, which was needed in connection with the then highly classified Polaris program.

Formerly the advertised bid method has been usable largely in peacetime years where subsistence, supplies, and standardized weapons and equipment were procured for a relatively small military establishment; also, if new items had to be procured, these criteria applied when military laboratories could take the time to perfect the concepts, complete the designs, and put the new item

into the procurement mechanism. But let some urgency be involved and time become critical and this slow-paced, routinized advertising procedure had to be abandoned to reduce the time either to select and get a contractor underway or to get the item complete enough--from a design specification standpoint--to put into a producer's hands.

Advertising has been used to accomplish large amounts of procurement; its suitability and successful utilization have been taken for granted. This does not mean that it is free from fault and defect. The general public does not hear very much about its weaknesses. This is what happens in actual operation under advertising.

Whenever anything goes wrong, it is possible to blame the impersonal system or the low bidder himself for the result, provided, of course, that all involved have meticulously conformed to the mechanical rules and avoided applying judgment and making decisions with which issue could be taken. The unsuccessful higher bidders have only themselves to criticize for not bidding more realistically; the late bidders--likewise, for their dilatory acts; the nonresponsive bidders, for the same reason. Procurement personnel can sympathize with those who were not the lowest; in rare cases, they may have to weigh disqualifications of a low bidder, but even this unpleasant act can be avoided except in the face of preponderant factual evidence, often not easily established.

Poor contracts DO result from advertising. Prices have been too low in cut-throat competitive situations, resulting in losses or low returns which have discouraged continuation of good contractors seeking to supply the government--where there is an alternative, of course; or have even resulted in

bankruptcy, particularly in small business enterprises with limited financial resources. The loss of suitable experienced contractors for these reasons hurts the defense programs either because of failure to deliver on time or at all; or because the economic pressure forces him to cut corners, perhaps quality.

Where the low bidder is a concern whose capabilities are suspect because of inadequate financing, technical ability, poor quality, incompetent management, or any similar weakness, it is very difficult to firmly take a position to disqualify it, lacking conclusive evidence or records. Even inexperienced procurement personnel can often sense these dangers by observation, interview, inspection, or research and lay it before higher authority; but the penalties for exercising such discretion can be severe under advertising. Most likely such a weak enterprise will be a small business concern, with numerous types of friendly support available, based primarily on the fine character and reputation of principal personalities involved.

One of the presently critical situations is the shortage of technical manpower. Such personnel are vital to the preparation of bids. Under the advertising system, an even larger number of bidders are permitted, or encouraged, to prepare and submit bids; obviously a large amount of this bid-preparation effort becomes wasted. In addition to wasting this currently precious resource, the actual dollar cost of the unsuccessful bidding effort by the large numbers of bidders must be recouped through expense factors on the government business handled by them eventually. Thus, the advertising system, <u>per se</u>, is prone to introduce an extra and uncontrollable cost.

Another hidden cost factor of much greater significance, but which is extremely difficult to evaluate, would be attributable to the advertising system if it were to be used more extensively, as many urge. This is due to the fact that the military services are no longer able to assume responsibility for complete engineering of as much equipment as they used to in pre-World War II days. Too many new kinds of items, vast new technologies just being created, and the need for stand-by manufacturing competence in industry for massive requirements all have forced upon the nation a military-industry partnership in technical competence, with military funding and direction, to attain superior weaponry.

The alternative course for government would be to develop a duplicate technological competence, competitively with industry, for exclusively military purposes--assuming that this was even possible in the present scientific and technical manpower shortage. If this duplicate engineering competence could be established--at great cost, and with damage to the overall economy--then the military could prepare the adequate, complete, and realistic specifications necessary to make sound advertising bids possible. Such an engineering force within the military establishment could explore the military problem; establish the environmental requirements; carry on the research and development work leading to successful prototypes; and then, following service-testing, attempt to prepare manufacturing designs that could be followed by industry to turn out an appropriate volume by best methods and at lowest cost. Fortunately, one cannot even consider this fantasy; the cost to support it would be gigantic, and its detrimental effect on our national development would be unacceptable. Instead, the military performs only the

initial phases of defining the problem, and trying to set up preliminary goals by means of performance specifications which recite military requirements and characteristics; then they turn to industry and ask a number of firms with advanced competence to contribute to the ultimate design on a competitive basis whenever the time, funds, and available skills make this possible.

Advertising would preclude this partnership technique in most areas of equipment. To force the use of advertising under these conditions--where complete competence is outside the military -- would seriously affect our military superiority. To even attempt it would require repeated cycles for individual steps in a development, in securing possible technical contributions, with a most probable inferiority, at a greater cost in time and money.

If advertising is the best form of procurement in practically all cases, as so many people, including congressmen, seem to think, then it should be widely used by the major purchasing activities of industry; but such is not the case.

In the first place, it is more expensive as a routine procedure due to a more complete preparation of bid data and to the larger volume of bidders to be supplied with such data. Also, the extra time intervals needed for this kind of routine procedure are not felt justifiable, or, in some cases, allowable.

Second, industry and commerce seem to have learned from management research and study that the fuller utilization of the individual's competence is important--even vital--to our national progress in the light of future manpower deficiencies. Industry strives to attain this by job analysis,

personnel training and development, increased responsibility, improved organization, and management control techniques. The very spirit of the advertising system, with its rigidity, is opposed to this concept, and would be a retrogressive step.

Industry has adopted some limited applications of what approaches advertising. A few institutions follow a mechanical bid procedure not unlike the government, but without its full rigidity. Much construction work lends itself to such a pattern; however, it seems clear that the adoption of the advertising-for-bid method to secure the benefits of competition has not been extensive and that other techniques, generally identified as negotiation, have served to secure the desired results of, first, assured delivery; second, essential quality; and then, when overall reliable performance is assured, insuring that the price is low but fair, in comparison with other equally competent sources. The lesson seems to be to hold on to a good supplier once you have found him.

Yet, because of the prevailing and persistent idea in Congress that the advertised bid is the best method of procurement, the Armed Service Procurement Act of 1947, which is the legal foundation of military buying, indicates strong preference for contracting by advertising and places considerable administrative burdens upon the contracting agency to justify negotiated contracts.

The legal downgrading of negotiation as a tool of contracting is contrary to the fact that both advertising and negotiation are necessary and desirable in the normal course of military buying.

It should be realized that, to a great extent, the nature of the item to be purchased determines whether advertising or negotiation is appropriate; for example, negotiation is generally a more efficient tool of purchasing than advertising in contracting for aircraft, ships, tanks, electronic gear, missiles, and proprietary items. When special arrangements are needed, as in long lead-time contracts, purchases MUST be by negotiation. On the other hand, when standard commercial type items or items with clear-cut specifications are being procured, advertising may be the preferable method of buying.

In negotiated purchasing, fair and reasonable prices to the military departments are insured through skillful negotiation, sound cost analysis, and repricing techniques; they are further insured when competition is present. When negotiations are under competitive conditions, the departments have a special advantage in the pricing process in that two or more rounds of negotiation with the knowledge of all competitors' prices are possible. Even though the Armed Services Procurement Act refers to competition almost exclusively in connection with purchases by advertising, competition can also play a very important role in negotiated contracting. Broad industry participation in military purchases can be accomplished through negotiation as well as advertising.

Invitations to submit proposals can be distributed widely; an aggressive company need not be foreclosed from negotiated contracts.

CHAPTER IV

COORDINATED MILITARY PROCUREMENT

During the past eleven years the Department of Defense has embarked upon a coordinated procurement program in order to eliminate duplication and overlapping of procurement operations between and among the military departments and to improve the effectiveness and economy of military supply and service operations. These objectives are achieved through centralization and consolidation of procurement functions common to two or more military departments in order to secure the benefits of large volume purchasing and are in the form of three programs: (1) single department procurement; (2) plant cognizance procurement; and (3) single manager procurement. The following hypothetical problems will illustrate how these programs save the taxpayers many procurement dollars.

Case #1

Let us say that the Bureau of Yards and Docks Supply Office, which is in charge of procuring all ordinary rolling stock and construction equipment for the U. S. Navy, including spare parts, decides, from the data furnished by its electronic data processing installation, that it will require 10,500

6-volt, dry-cell automobile batteries for use in the Navy's rolling stock during fiscal year 1962.

Considering the means available for procuring so large a volume of a common item, one would naturally conclude that the most economical method would be to issue specifications and solicit bids. Such is not the case, however, as far as the Navy is concerned, because of the Department of Defense's single department procurement program.

Under this program one military department, utilizing its regularly established purchasing system, purchases the requirements for certain commonly used commodities for all the military departments. The thirty-two commodities assigned to this type of procurement include such items as paint, lumber, coal, photographic equipment, drums and cans, hand tools, solid fuels, and dry-cell batteries. The Army has been assigned responsibility for procurement of the latter, so the Bureau of Yards and Docks Supply Office would not attempt to purchase its 10,500 dry-cell batteries direct from industry but would forward the order to the U. S. Army, where it would be combined with similar requirements of the other armed services and procured, very likely, in one large order for a unit price appreciably lower than that which any one of the services, acting independently, could have obtained.

Case #2

Assuming that the Bureau of Naval Weapons desires to procure two hundred rotor blades as replacement parts for Sikorski helicopters in use throughout the naval air force, one would imagine that the way to accomplish this would be to negotiate directly with the Sikorsky Aircraft Division of

United Aircraft Corporation for a fair price. Instead, the order is placed with the U. S. Air Force. Why? Because procurement of this particular item falls within the Department of Defense's plant cognizance procurement program, under which responsibility for all procurement of aircraft engines, propellers, and airframes from certain commercial aviation plants has been assigned to either the Air Force or the Navy.

In this particular case, the Air Force has been assigned cognizance over the plant that produces the propellers for the Navy's helicopters.

Unlike the single department procurement program, the plant cognizance procurement program does not save money directly through mass purchasing; rather, it permits proper service allocation of sometimes-limited production capacity available. Further, it avoids duplication of military inspection procedures and personnel in a particular plant, and provides a single point of contact and source of information within the plant for contractors.

This and the other consolidated procurement programs have reduced the number of inspectors from 18,000 to 13,000.

Case #3

The U. S. Army, in predicting its permanent change of station movements for fiscal year 1962, arrives at the following estimates, among others:

1. Personnel traveling to and from overseas stations via ship
   a) 2,840 officers
   b) 7,453 officers' dependents

c) 5,832 enlisted personnel

d) 16,712 enlisted personnel's dependents

e) 44,760 troops

2. Personnel traveling to and from overseas stations via aircraft

a) 6,405 officers

b) 3,669 officers' dependents

c) 47,718 enlisted personnel

d) 12,845 enlisted personnel's dependents

Now the Army doesn't start arranging commercial ship transportation and signing contracts with aircraft passenger lines to handle the large volume of transportation required for such personnel movements. Instead, it gives its ship movement requirements to the Military Sea Transportation Service of the U. S. Navy, and its air movement requirements to the Military Air Transportation Service of the U. S. Air Force.[29] These services are operated under the Department of Defense's single manager procurement program.

In this program, centralized procurement activities, assigned for management to the secretary of a single military department, procure the combined net requirements for selected, commonly-used commercial type commodities and services for all military departments. Some of the commodities and services included, besides ocean and air transportation, are subsistence, petroleum and petroleum products, clothing and textiles, and medical material. Like the single department procurement program, the single manager procurement program saves taxpayers dollars by coordinating the requirements of ALL the military services and procuring them on a massive basis.

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[29] In far greater detail, of course, than the above estimates.

There is another centralized procurement program which should be mentioned, but this one is government-wide in scope, rather than being confined solely to the Department of Defense. This is the interdepartmental procurement program, operated by the General Services Administration. Under this program, the General Services Administration procures certain commonly used, commercial-type items for all government agencies, including the Department of Defense. Examples are household and office furniture, typewriters, floor coverings, spark plugs, and vacuum cleaners. Economy is effected through the same principle as that involved in single-department and single-manager procurement programs.

CHAPTER V

SUMMARY

Military procurement in the United States is so large, diverse, and complex that it dwarfs full comprehension. Much publicity has been given to the waste and expensive "goofs" which have been uncovered in the developing and purchasing of defense hardware but little information is circulated by the press and Congress concerning the efforts of the armed services to make procurement more economical.

It is doubtful if one out of one hundred Americans ever heard of the coordinated military procurement programs just discussed, or realizes the considerable economies in money and manpower which they have effected.

When a contracting officer errs in the type of contract he employs for the purchase of an expensive type of electronic equipment, the chances are very good that the story will make the newspapers. When the same contracting officer saves the Defense Department considerable money through use of the right contract and through judicious repricing, the good news never gets outside professional circles.

It is this type of one-sided reporting that leaves the American public with the general impression that military procurement is fraught with waste, caused principally by indifference, incompetency, and stupidity on the part of procurement personnel.

The truth of the matter is that the majority of contracting officers are intelligent, hard-working, well-trained, and career-motivated personnel who are interested in doing the best job possible, if for no other reason than that their promotion depends upon it. There is also tremendous pressure throughout the military organization to get the most for the money spent. This is because Department of Defense estimates of what it really needs are annually $10 to $13 billion greater than the amount appropriated by Congress, which naturally generates acute cost-consciousness in the higher echelons.

Expensive procurement mistakes are made because the people doing the procuring are only human and can remember so much and no more. The procurement process is unnecessarily complicated by social-economic legislation of doubtful value and by the insistence of Congress that negotiated contracts be justified out of all proportion. Removal of these time-consuming, confusing, and complicated encumberments will simplify the procurement process appreciably, permit contracting and other procurement personnel to concentrate on their primary jobs, and will result in more economical and faster purchasing of the necessary supplies and equipment.

The armed services should have a maximum latitude of judgment in developing suppliers of military products in much the same manner as industry develops its suppliers. This is of particular importance because of the dependence of military strength upon sound relationships between industry and the departments. Human judgment should not be discounted in favor of the mechanical procedures of advertising.

Negotiation should be recognized in law for what it is, viz., a perfectly normal, sound buying method which the departments find necessary to place heavy reliance upon. They should not have to justify it every time they use it.

With regard to social-economic legislation, a strong case exists against maintaining social control through contracts. It is the mission of the contracting agency and the procurement officer to obtain what is needed, in both quantity and quality, at the time when it is needed, at a decent price, and under circumstances which are fair to both the government and the contractor. The government has no particular desire to drive a hard bargain; neither is it in the business of making contractors rich through excessive profits. A basic idea of federal procurement is to give the contractor a decent, reasonable profit.

The procurement process, at best, is a complex, often tediously detailed operation; for example, the Armed Services Procurement Regulation (1960 Edition) numbers 904 pages, with a new change of 25 to 70 pages forthcoming every two to three months. This is supplemented by the Navy Procurement Directives (611 pages) plus voluminous Navy Department instructions, all on the subject of how to procure, what to do, and what NOT to do. It is extremely difficult to keep abreast of all of this printed information.

Military procurement is an operation of such magnitude that it cannot be compared to operations in the business world. It encompasses far more than the award of contracts. The latter is just a part of the entire procurement

process. Once awarded, the contract must be administered -- payments and inspections must be made, deliveries must be accepted, and change orders issued; occasionally contracts must be terminated, and often prices are redetermined. Under some contracts an audit must be made of the contractor's books, and subcontracts must be approved. These are but a few of the many aspects of contract administration, which is the part of the procurement process designed to assume performance of the contract. Even before awarding a contract a complex procedure must be followed for the determination of requirements, the drafting of specifications, and the budgeting of funds.

As complex as it would be without adornment, the process is made even more tedious and confusing by added requirements which have nothing to do with the articles being bought. At the very least, these requirements burden personnel engaged in buying with considerations which are often mutually contradictory and which tend to obscure the goal sought. How can the purchaser favor, for example, both small business and surplus labor areas? When should a large procurement be broken into smaller orders to give small businesses a chance to compete--at a probable increase in procurement price? As a result of these nonbuying requirements delays in procurement are bound to occur, to some extent. The elaborate administrative machinery set up to administer the policies of aid to small business is a good example.

The requirements are also burdensome to the draftsmen of the contracts, who must engage in combat with some clauses which are either meaningless or so ambiguous as to be unintelligible, resulting in pages of so-called "boilerplate" attached to contracts. The fine print of these clauses is often

not enforced, because the military services do not have enough personnel to enforce each of the contract warranties.

In some cases the clauses place the responsibility of insuring compliance with their terms on government personnel not trained to enforce statutes, and whose job is entirely unrelated to law enforcement.

The social clauses in government contracts serve no useful purpose whatever from the point of view of the buying agency itself. On the contrary, they create problems and add burdens to an already exceptionally complex process.

Are the ends attained through contract manipulation worth the price of confusion and delay? It is reasonable and logical to maintain that the federal government, and especially the Department of Defense, adopt a hardheaded, business-like approach to its contracting. Certainly there is a strong national interest in minimizing the cost of government procurement, as to both the cost of goods and services obtained and the cost of personnel engaged in that activity; and there is an equally strong national interest in obtaining military goods as soon as possible. On the other hand, there is also strong interest in a vigorous American economy, the survival of small business, and better wages and working conditions; nevertheless, to the extent that errors are made, costs go up, and delays occur, the regulatory ends appear unjustified and, most especially, the Buy American Act, DMP-4, and the Small Business Act should be rescinded.

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